

D--1557
Alameda, Santa
Clara, Contra
Costa, and San
Mateo Counties, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ELDER & COMPANY

and

Case 32--CA--10626

LOCAL 1304, UNITED STEELWORKERS OF
AMERICA. AFL--CIO/CLC

DECISION AND ORDER

By Chairman Stephens and Member Sevaney and Bratt
On October 4, 1989, Local 1304, United Steelworkers of America (Union)

filed an unfair labor practice charge against Elder & Company, the Respondent, alleging that it engaged in various acts and conduct in violation of Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to make contractually mandated payments to the contractually established Health and Welfare Fund, and Pension Fund; by failing to forward moneys to the International Union deducted from employee paychecks for union dues as provided for in the contract; and by refusing to meet with the Union to discuss the reasons for the Respondent's delinquencies in making these payments. A copy of the charge was served on the Respondent. On November 22, 1989, the charge was conditionally withdrawn pursuant to a representation by the Union that the parties had reached a tentative resolution of their dispute. On April 6, 1990, the Regional Director for Region 32 approved a request by the Union to rescind the conditional withdrawal of the charge, and the matter was reopened for further proceedings. On May 30, 1990, a complaint and notice of hearing was issued by the Regional Director for Region 32,

D--1557
Alameda, Santa
Clara, Contra
Costa, and San
Mateo Counties, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ELDER & COMPANY

and

Case 32--CA--10626

LOCAL 1304, UNITED STEELWORKERS OF
AMERICA. AFL--CIO/CLC

DECISION AND ORDER

By Chairman Stephens and Member Sevarney and Bratt
On October 4, 1989, Local 1304, United Steelworkers of America (Union)

filed an unfair labor practice charge against Elder & Company, the Respondent, alleging that it engaged in various acts and conduct in violation of Section 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to make contractually mandated payments to the contractually established Health and Welfare Fund, and Pension Fund; by failing to forward moneys to the International Union deducted from employee paychecks for union dues as provided for in the contract; and by refusing to meet with the Union to discuss the reasons for the Respondent's delinquencies in making these payments. A copy of the charge was served on the Respondent. On November 22, 1989, the charge was conditionally withdrawn pursuant to a representation by the Union that the parties had reached a tentative resolution of their dispute. On April 6, 1990, the Regional Director for Region 32 approved a request by the Union to rescind the conditional withdrawal of the charge, and the matter was reopened for further proceedings. On May 30, 1990, a complaint and notice of hearing was issued by the Regional Director for Region 32,

alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On July 20, 1990, the General Counsel filed a Motion for Summary Judgment. On July 26, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated June 19, 1990, notified the Respondent that unless an answer was filed by the close of business June 26, 1990, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a California corporation, is engaged in the business of operating a forklift repair and parts facility at Hayward, California, where during the 12 months preceding issuance of the complaint, it purchased and received goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California, and sold goods or provided services valued in excess of \$50,000 to customers or enterprises within the State of California, which customers or suppliers themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by Respondent at plants located in Alameda, Santa Clara, Contra Costa, and San Mateo Counties within the State of California; excluding office clerical employees, professional employees, sales employees, guards and supervisors as defined in the Act.

At all material times the Union has been the designated collective-bargaining representative of the employees in the unit and has been recognized as such by the Respondent. This recognition has been embodied in a collective-bargaining agreement, effective from August 1, 1987, to August 1, 1990. By virtue of Section 9(a) of the Act, the Union is the exclusive representative of the employees in the bargaining unit for the purposes of collective

bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

The parties' collective-bargaining agreement requires the Respondent to make monetary contributions to certain plans and/or trust funds concerning employee benefits including the Health and Welfare Fund, the Pension Fund, and the Life Insurance Fund. The Respondent is also required to forward moneys deducted from employee paychecks for union dues to the International Union. Since November 1989, the Respondent has failed and refused to make the contractually required monetary payments to the Pension Fund; since January 1990, the Respondent has failed and refused to make the contractually required monetary payments to the Health and Welfare Fund and the Life Insurance Fund; and since February 1990, the Respondent has failed and refused to remit to the International Union money deducted from employee paychecks. By these acts and conduct, the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Conclusions of Law

By ceasing during the term of the contract to make contractually required payments to the Health and Welfare Fund, the Life Insurance Fund, and the Pension Fund, and by failing to remit union dues, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make whole the unit employees by making all contributions to the Health and Welfare Fund, the Life Insurance Fund, and the Pension Fund, as provided in the collective-bargaining agreement that have not been paid and that would have been paid but for the Respondent's unlawful discontinuance of payments.¹ We also shall order Respondent to reimburse the unit employees for any expenses ensuing from its failure to make such payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest computed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Additionally we shall order the Respondent to remit to the International Union all union dues that the Respondent has deducted from the pay of its union employees, with interest as computed in New Horizons for the Retarded.

ORDER

The National Labor Relations Board orders that the Respondent, Elder & Company, Hayward, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Local 1304, United Steelworkers of America, AFL--CIO/CLC, by failing and refusing to make contractually required monetary payments to the Health and Welfare Fund, Life Insurance Fund, and Pension Fund, and by failing and refusing to remit dues to the International Union.

¹ Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "'make-whole'" remedy. Merryweather Optical Co., 240 NLRB 1213 (1979).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all contributions to the Health and Welfare Fund, Life Insurance Fund, and Pension Fund, as provided in the collective-bargaining agreement, that have not been paid and that would have been paid in the absence of the Respondent's unlawful discontinuance of the payments and remit all past due union dues and make unit employees whole, as set forth in the remedy section of this decision. The unit is:

All full-time and regular part-time employees employed by Respondent at plants located in Alameda, Santa Clara, Contra Costa, and San Mateo Counties within the State of California; excluding office clerical employees, professional employees, sales employees, guards and supervisors as defined in the Act.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payment due under the terms of this Order.

(c) Post at its facility in Hayward, California, copies of the attached notice marked "'Appendix.'"² Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with Local 1304, United Steelworkers of America, AFL--CIO/CLC, by failing and refusing to make contractually-required payments to the Health and Welfare Fund, the Life Insurance Fund, and the Pension Fund, as well as remitting union dues to the International Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all contributions to the aforementioned funds and remit all union dues with interest that have not been paid and that would have been paid absent our unlawful discontinuance of the payments and we will make unit employees whole. The unit is:

All full-time and regular part-time employees employed by Respondent at plants located in Alameda, Santa Clara, Contra Costa, and San Mateo Counties within the State of California; excluding office clerical employees, professional employees, sales employees, guards and supervisors as defined in the Act.

ELDER & COMPANY

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 2201 Broadway, Second Floor, Oakland, California 94612-3017, Telephone 415--273--6122.